IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 6334 of 2007(D)

PETITIONER:

O.C.GEEVARGHESE, AGED 71,
S/O.CHUMMAR, OORAKKADAN HOUSE, NEDUNGAPRA KARA,
VENGOOR VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS:
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1. STATE OF KERALA, REP. BY SECRETARY
HOME AFFAIRS, SECRETARIAT, THIRUVANANTHAPURAM.

2. CIRCLE INSPECTOR OF POLICE,
KURUPPUMPADY POLICE STATION, VIA PERUMBAVOOR.

3. MATHAI, S/O.KURIAKOSE,
PUTHUSSERY HOUSE, PANIYELI KARA,
KOMBANAD VILLAGE.

4. VELAYUDHAN, S/O.PAPPU,
THAMARACHALIL, PANIYELI KARA,
KOMBANAD VILLAGE.

5. KUNJAPPAN, S/O.MATHAI,
PERUMPILLY HOUSE, PANIYELI KARA,
KOMBANAD VILLAGE.

BY ADV. SRI.RAJESH VIJAYAN
SRI. SALIM P.A, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF JUDGMENT IN A.S 85/99 DATED 07.02.2003 OF ADDITIONAL DISTRICT COURT NORTH PARAVUR.

EXT.P2: TRUE COPY OF EXECUTION PETITION IN E.P.104/04 IN O.S. 59/05 OF MUNSIFF'S COURT PERUMBAVOOR DATED 06.12.2004.

EXT.P3: TRUE COPY OF REPORT OF ADVOCATE COMMISSIONER IN E.A. 65/05 IN E.P. 104/04 DATED 30.06.2005.

EXT.P4: TRUE COPY OF REPORT OF ADVOCATE COMMISSIONER IN E.P. 104/2004 DATED 30.01.2006.

EXT.P5: TRUE COPY OF COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT ON 04.01.2007.

EXT.P6: TRUE COPY OF COMPLAINT SUBMITTED BEFORE THE 2ND RESPONDENT ON 19.02.2007.

/True Copy/

P.A to Judge.

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID,JJ

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W.P.(C). NO. 6334 OF 2007

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Dated this the 14th day of August, 2007.

JUDGMENT

Balakrishnan Nair,J

The petitioner has approached this Court seeking the following reliefs:

i. to issue a writ of mandamus or any other appropriate writ order or direction directing the 2nd respondent to provide adequate police protection to the life of the petitioner and his workers who are engaged in the work of the petitioner in Exhibit P1 property.

ii. to issue a writ of mandamus or any other appropriate writ order or direction the 2nd respondent to provide adequate and sufficient police protection to protect Exhibit P1 property by restoring the kayyalas on eastern and southern sides and also to remove the obstruction to the access of the property of the petitioner from the western side.

The facts of the case as stated by the petitioner are as follows:

2. The petitioner owns 2 acres and 25 cents of land in resurvey Nos.27/4 and 27/7 of Vengoor village. His neighbours respondents 3 to 5 tried to cut open a pathway through the said property by demolishing a portion of his compound wall on 01.01.1995. His access to the public road was also blocked. He moved the Civil Court by filing

O.S. No. 59/95 seeking appropriate reliefs. The said suit was dismissed on 31.3.1999. The petitioner moved the appellate Court by filing A.S. No. 85/99. The appeal was allowed by Ext.P1. The relevant portion of the appellate judgment reads as follows:

> "In the result, this appeal is allowed. There will be a decree of permanent prohibitory injunction restraining the respondents and their men from demolishing the temporary fencing constructed by the appellant in the portion of compound wall destroyed by the respondents and from tresspassing into the plaint schedule properties and also from committing any further mischief in the plaint schedule property. The respondents are also restrained from obstructing the appellant in constructing the compound wall portion which was destroyed and from causing any obstruction in the passage through the south-western corner of plaint schedule properties. In the circumstances of the case the parties are directed to suffer their respective costs."

3. Later he moved E.P. No. 104/2004 in the said suit. In the E.P, an Advocate Commissioner was appointed. The Advocate Commissioner reported that only with police protection the damaged compound wall can be constructed and the petitioner's access to the public road can be opened. After hearing both sides, the Munsiff Court ordered police assistance to the Commissioner and in the presence of the Commissioner and the police the decree was executed by constructing the compound wall and also opening his access to the public road. Thereafter, the E.P was closed, it is submitted.

4. While so in February, 2007 again a portion of the petitioner's compound wall was demolished and a path way was cut open and his access to the public road was also blocked. In the above background, the petitioner filed Exts.P5 and P6 representations before the police seeking police protection. When those representations were not attended to, this writ petition was filed seeking the above quoted reliefs. The learned Government Pleader upon instructions submits that parties were called for a conciliation and the respondents 3 to 5 were advised to respect the civil court's order. It is also reported that there is no threat to the life of the petitioners. The police also pointed out that the 4th respondent is a 90 year old man.

5. The respondents 3 to 5 have filed a counter affidavit in which it is submitted that the pathway was opened in 1995 by surrendering the land of the people of the locality, including the petitioner. The road was formed by the N.S.S unit of Bharat Matha College with the active support of the local people. Later the petitioner moved the Civil Court impleading only some of the persons in the locality. There was no representative impleadment and no application was filed under Order I Rule 1(8). The interested persons were not made parties. Therefore, they are not bound by the decree. The respondents assert

that the pathway was formed by surrendering of land by the owners including the petitioner. The respondents submit that they are not involved in the demolition of the compound wall or opening of the pathway.

6. The petitioner filed a reply affidavit stating that the actions of respondents 3 to 5 and their supporters have created a law and order problem. They have damaged the compound wall and also closed his access to the public road.

7. Having regard to the facts of the case, we feel that the petitioner is entitled to get protection in view of Ext.P1 judgment, which was already executed. The respondents 3 to 5 have no manner of right to claim that there is a pathway and they are entitled to use it. If they have any claim in this regard, they have to move the competent Civil Court and establish their rights. Until such time, the petitioner is entitled to enjoy the fruits of the Ext.P1 judgment. Accordingly, the 2nd respondent is directed to give protection to the petitioner, if he moves the said respondent pointing out the date and time when he proposes to construct the compound wall and also to open his access to the public road. In that event, the 2nd respondent shall render necessary protection to the petitioner for doing the said

works. If there is any threat to the life of the petitioner as alleged, he may move the 2nd respondent and the 2nd respondent will look into the same and take appropriate action in accordance with law.

The writ petition is disposed of as above.

K. BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID,JUDGE.

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